

2004 CONTRACT

PRINTING, BINDING, PACKAGING, AND DELIVERING OF THE 2004 IOWA ACTS

I. PARTIES

The parties to this contract are the Legislative Services Agency, herein referred to as the "Agency," an organization created under the jurisdiction of the Iowa General Assembly pursuant to section 2A.1 of the Iowa Code, and West Publishing Corporation (West, a Thomson business), herein referred to as "Contractor," a business located in Eagan, Minnesota, and identified with the Federal Employer Identification Number 41-1426973.

II. DEFINITIONS

As used in this contract, unless the context otherwise requires:

- A. **"Book"** means the printed, finished, and bound edition of the 2004 Acts and Joint Resolutions (Session Laws) enacted during the 2004 regular session of the Eightieth General Assembly and any extraordinary sessions of that General Assembly as required to be produced and delivered as provided in this contract.
- B. **"Acts"** means an edition of the Acts and Joint Resolutions (Session Laws), a single volume case bound book containing statutes and miscellaneous materials, including an index, that is published each year under the direction of the Iowa Code Editor, pursuant to Iowa Code chapter 2B.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

- C. ***"Contract Price"*** means the total amount of money owed to the Contractor for the production and delivery of all books accepted by the Agency under this contract which is the base amount as provided in Part X, Paragraph "C" subject to adjustment as provided in Part X, Paragraph "D".
- D. ***"Delivery"*** means a party's receipt of an item sent by the other party as provided in this contract.
- E. ***"Production"*** includes all necessary and customary work related to the creation of sample covers; the composition of blue line pages; the printing of assembled pages; the assembly of the pages; the binding and the finishing of the books; and the packaging of the finished books for delivery, all as provided in this contract.

III. GENERAL PROVISIONS

- A. ***Choice of Law and Forum.*** This contract is governed by the laws of the State of Iowa. All disputes and controversies regarding this contract shall be heard in the District Court of Polk County, Iowa.
- B. ***Compliance with Applicable Laws and Regulations.*** During the duration of this contract and as a condition of the Contractor's duty to perform under the provisions of this contract, the Contractor shall comply with all applicable laws and regulations of the State of Iowa and the United States, including, but not limited to, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991 (42 U.S.C. ch. 21), and the federal Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651--678).
- C. ***Agency's Interest in Materials.*** Materials produced in whole or in part as provided in this contract shall not be subject to copyright by the Contractor in the United States or in any other country. The Contractor shall not release text or data originating from electronic media transferred or delivered to the Contractor and containing any portion of the books, without the express written approval of the Agency.
- D. ***Contractor's Confidential Information.*** The Agency shall not act as a party in any lawsuit to protect the rights of the Contractor.
- E. ***Subcontracting.*** The Contractor shall not provide for subcontracting, unless the Agency approves the subcontractor and the terms and conditions of the subcontracting agreement as provided by the Agency. For purposes of this contract, subcontracting does not include the use of vendors by the Contractor to deliver blue line pages, assembled pages, or books to the Agency or to another person specified in this contract.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

- F. *No Pecuniary Gain or Conflict of Interest.*** The Contractor agrees that to its knowledge, neither the staff of the Agency nor a member of the General Assembly of the State of Iowa has or will receive any direct economic benefit because of the selection of the Contractor as a party to this contract. The Contractor agrees that it has no interest and will not acquire any direct or indirect interest which would conflict in any manner with the performance of this contract, and that a person having such an interest will not knowingly be associated in the performance of this contract.
- G. *Assignment or Transfer.*** The Contractor shall not assign or transfer any interest in this contract to another person without the prior written consent of the Agency.
- H. *Fixed Price Contract.*** This is a fixed price contract. Except as otherwise expressly provided in this contract, or expressly agreed to by the parties, the total price paid to a Contractor must be fixed as provided in this contract. Except as provided in this contract, no special fees or expenses shall be charged directly to the Agency, including labor, materials, equipment, insurance, packing, freight, travel, parking, or any other costs incurred in producing and delivering the books.
- I. *Computing Time.*** For purposes of computing delivery requirements as provided in this contract:
- 1. *Calendar Day.*** A calendar day begins at 8:00 a.m. and ends at 4:30 p.m. central time. In computing time, the first day is excluded and the last day is included unless the last day falls on a Sunday or a legal public holiday as defined in Iowa Code § 1C.1, in which case the time prescribed is extended to include the next succeeding calendar day. Any reference in this contract to "day" means a calendar day unless otherwise provided.
 - 2. *Business Day.*** A business day begins at 8:00 a.m. and ends at 4:30 p.m. central time. A business day is a calendar day other than a Saturday or Sunday or a day recognized as a legal holiday by the State of Iowa (see Iowa Code § 1C.1). In computing time, the first business day is excluded and the last business day is included.
- J. *Renewal.*** The Agency reserves the right to execute a renewal contract to produce the 2005 edition of the Acts with the Contractor according to provisions agreed to by the parties which shall be substantially similar to the provisions of this contract.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

IV. GENERAL SPECIFICATIONS

- A. General Requirements.** The Contractor shall provide all blue line pages and proofs, paper, and printing, cover materials, ink, dies, stamping, binding, finishing, packaging, packing and loading on pallets, shipping, freight, and all other materials and labor necessary to complete production and delivery of the blue line pages, assembled pages, and books.
- B. General Standard.** The materials or workmanship used in the production of blue line pages, assembled pages, covering material, binding, or books shall be at least equal to materials and workmanship described in this contract or used in the production of blue line pages, assembled pages, or books for the 2003 edition of the Acts, whichever is greater. If an issue involves the appearance or quality regarding blue line pages, assembled pages, or books, the appearance must at least equal the appearance of blue line pages, assembled pages, or books for the 2003 edition of the Acts. This standard shall prevail over specific standards provided in this contract. The following exceptions apply:
- 1. Paper Stock.** The paper stock must meet the detailed standards as set out in Part V.
 - 2. Cover.** The cover must meet the detailed standards as set out in Part V.

V. DETAILED SPECIFICATIONS

- A. Book Size.** The size of each book must be 7.50" X 10.75".
- B. Paper.** The book's paper must meet all of the following requirements:
- 1. Book Pages.** The Contractor shall use paper stock referred to as "Custom Plus" manufactured by Nexfor Fraser Papers Inc. or the equivalent as approved by the Agency. However, the paper stock must meet all of the following requirements:
 - a. Size.** The size must be 7.25" X 10.50" finished.
 - b. Color.** The color must be cream.
 - c. Finish.** The finish must be English.
 - d. Brightness.** The brightness must be 80.



2004 CONTRACT PRINTING AND BINDING THE 2004 IOWA ACTS

- e. **Opacity.** The opacity must be 88.
 - f. **Basis Weight.** The basis weight must be 35#.
 - g. **PPI.** The weight must be 800 pages per inch (ppi).
 - h. **Recycled Material.** 100 percent of the paper stock must contain at least 30 percent (30%) postconsumer recycled materials. The recycled paper must meet the requirements for procuring recycled printing paper as provided in the federal Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. § 6962, and set forth in 40 C.F.R., pt. 247, and in related executive orders or advisory notices issued by the United States Environmental Protection Agency.
 - i. **Duration.** The paper stock must be resistant to oxidation and must be of archival quality. The paper must be pH neutral (content of 7 or 7.5).
2. **Paper Stock for End Sheets.** The paper stock for the end sheets must be 80# Publisher White, or an equivalent approved by the Agency.
- C. **Soy-based Ink.** 100 percent of the ink used in printing the text paper must contain at least 10 percent soy oil.
- D. **Page Composition and Printing.** The books shall be composed according to all of the following requirements.
- 1. **Size of the Image Area for Type.** The size of the image area for type must be 33.25 x 54.75 picas, including the folio.
 - 2. **Font.** The font must be Imperial BT.
 - 3. **Ink.** The pages must be produced with 1/1 black ink on two sides.
 - 4. **Bleed Bars.** The books must contain 3/8"-wide bleed bars with reverse copy as specified by the Agency. The bleed bars must be located on the right-hand pages. A book must contain bleed bars running the entire length of the page as specified by the Agency. For materials associated with the regular session, at least two pages must have a bleed bar. For materials associated with any extraordinary session, at least three pages must have a bleed bar.
 - 5. **Artwork.** The books will include minimal artwork, including the image of the state seal as produced by the Agency.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

E. *Binding and Finishing.* The Contractor shall bind and finish the books according to all of the following requirements:

- 1. Book Block.** The book block must be composed of tightly sewn 32-page signatures or split signatures as approved by the Agency. The binding must be Smythe sewn. The first and last signatures must be reinforced at the spine with cambric which measures at least 1" in width and at least 7/8" from the spine when concealed after the cover is attached to the end sheets. The first and last signatures must be tipped to adjoining signatures. Any signature of less than 16 pages must be wrapped around a preceding signature. A signature cannot have less than 8 pages unless otherwise approved by the Agency. The book block must be thoroughly glued, smashed, and lined with one or more supers and gauze tape in a manner that assures that the book block is sturdily bound. The book block must have a head band and foot band (its color alternating red and gold in a checkerboard pattern).
- 2. Casing.** The casing must be securely attached to the book block. The casing must contain a heavy 90# Kraft back line on the spine area. The boards must be Davey Red Label Binder's Board with .097" thickness or an equivalent board as approved by the Agency. The end sheets must be heavy weight. The spine must be loose and rounded. The joints must be uniform and tight and the casing must include adequate gutters.
- 3. Cover.** The cover of the books must comply with all of the following requirements:
 - a. Fabric.** The cover of the books must be the same buckram grain commonly known as the type and variety designated as Roxite F Taupe #69564, and produced by ICG-holliston, or an equivalent buckram approved by the Agency.
 - b. Decoration.** The cover decoration must include one impression of blind stamping on the front and back covers. Otherwise, the front cover shall not include decoration. On the spine, the decoration must include one impression of a black numeral, one impression of red foil with gold leaf above the numeral, and one impression of black foil with gold leaf below the numeral. The spine's impressions must include a reference to the session of the Acts and the number of the Iowa General Assembly.
- 4. Type and Bars.** The Contractor must set all type and bars from the sampling die on the spine.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

VI. DELIVERY AND FORMAT OF MATERIALS DURING PRODUCTION

- A. General.** The Contractor is required to pick up and deliver materials during production. The Contractor must deliver materials personally or by a courier as approved by the Agency. The FedEx Corporation or United Parcel Services (UPS) is an approved courier.
- B. Composed Pages.** The Agency shall furnish to the Contractor fully composed postscript pages in an electronic format.
- 1. Electronic Format.** The Agency may deliver files used in production by electronic transfer directly to the Contractor by file transfer protocol (FTP), electronic mail, or to the Contractor's Internet web site, or by delivery of files stored on electronic media (e.g., CD-ROM).
 - 2. Paper Copies.** The Agency will also deliver to the Contractor paper copies of composed pages delivered electronically for work.
- C. Blue Line Pages.** The Agency shall determine the format to be used for proof pages, which are referred to within this contract as "blue line pages." The format may include conventional blue line pages or an equivalent as established by the Agency.

VII. TRIAL PRODUCTION

- A. Covers.** As part of the trial production, the Contractor shall deliver sample covers for Agency approval as follows:
- 1. Paper-Proof Copy.** The Agency will deliver to the Contractor all information required to appear on the covering for the books. The Contractor must deliver a paper-proof copy of the books which illustrates how the cover will appear when the book is bound, including all lettering and numbering, and the location of the required foils. The Contractor must deliver the paper-proof copy within 10 calendar days after the Agency delivers the necessary information needed to produce the paper-proof copy to the Contractor. The Contractor must deliver any corrected paper-proof copy within five calendar days after the Agency delivers the corrections to the Contractor.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

2. **Sample Cover.** The Contractor shall deliver to the Agency a sample cover for the books. The sample cover must be a replica of the covering for the book. It must include the same fabric, blanking, impressions, and foil stamping, and the same dyes that will be used in the production of the books. It must be trimmed to size or marked to illustrate the trim size. The lettering and numbering and the location of the foils and impressions must be identical to those used in the production of the book. The Contractor must deliver the sample cover within 10 calendar days after the Agency delivers to the Contractor the final page count for the books. The Contractor must deliver any corrected sample copy within five calendar days after the Agency delivers the corrections to the Contractor.

B. Blue Line Pages. As part of the trial production and in preparation for the production and delivery of blue line pages used in the production of the books as provided in Part VIII, the parties shall provide for the production and approval of sample blue line pages. All of the following apply:

1. **Purpose.** This part of the trial performance period shall be used to establish a system for the reliable transfer of information to the Contractor for purposes of producing blue line pages in the production of the books as provided in this contract. The Agency may accomplish the delivery by transferring files used in production electronically including but not limited to by File Transfer Protocol (FTP).
2. **Standards and Specifications.** The test pages delivered by the Agency to the Contractor shall be composed pages which are substantially equivalent to pages required to be produced for the books under Part VIII. The Contractor shall use the test pages to produce sample blue line pages that conform to the standards and specifications established by the Agency.
3. **Delivery and Approval.** The Agency will deliver test blue line pages to the Contractor in an electronic format in the same manner as the Agency expects to deliver composed pages to the Contractor for the production of blue line pages for the production of the books as provided in Part VIII, Paragraph "A". The Contractor shall deliver sample blue line pages to the Agency not later than 10 calendar days from the date that the Agency delivered the test pages. The Agency shall return sample blue line pages to the Contractor for correction and any subsequent production, delivery, and approval. The Agency shall deliver corrected sample blue line pages to the Contractor in the same manner as the Agency expects to deliver corrected blue line pages for the production of the books as provided in Part VIII, Paragraph "A". The Agency may require that the Contractor produce and deliver any number of subsequent sample blue line pages prior to approval.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

VIII. PRODUCTION

- A. *Production, Delivery, and Approval of Blue Line Pages.*** Following the Agency's approval of sample blue line pages during the trial performance period as provided in Part VII, Paragraph "B", the parties shall provide for the production, delivery, and approval of blue line pages for the production of the books. All of the following apply:
- 1. *Standards and Specifications.*** The Agency shall deliver composed pages in an electronic format to the Contractor for purposes of producing blue line pages used to produce the books. The composed pages will be substantially equivalent to the test pages used to produce the sample blue line pages approved by the Agency as provided in Part VII, Paragraph "B". The Agency may provide for the delivery of composed pages based on a system for the reliable transfer of test pages established during the trial performance period as provided in Part VII.
 - 2. *Schedule.*** The Contractor shall provide for the production and delivery of blue line pages. The Agency will deliver composed pages used to produce the books, and the Agency shall deliver its approval of the blue line pages for the books to the Contractor. All of the following shall apply:
 - a. *Incremental Delivery of Composed Pages and Blue Line Signatures.*** The Agency may deliver composed pages to the Contractor in installments as pages are completed in order to facilitate their production. During production, the Contractor shall arrange the blue line pages in sequential order by signature, or by split signature as approved by the Agency. The Contractor shall assemble two sets of blue line signatures for the book, or parts of the book if requested by the Agency, for delivery to the Agency.
 - b. *Deadline.*** The Contractor must deliver each installment of blue line pages to the Agency within five business days after the Agency delivers that installment of composed pages to the Contractor. However, the Agency may waive this requirement and authorize the Contractor to deliver part of the installment within the five-business-day period and the remainder part of the blue line pages on a subsequent business day.
- B. *Production and Delivery of Assembled Pages.*** Following the Agency's approval of all blue line pages as provided in Paragraph "A" of this part, the parties shall provide for the production and delivery of assembled pages for the Agency's use prior to delivery of the books. All of the following apply:



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

1. **Standards and Specifications.** As used in this contract, assembled pages are the same as "cut copy pages" as commonly used in the industry. Assembled pages must be printed and folded, signatures trimmed to book page size, three-hole punched, and sorted prior to delivery. The Contractor shall produce assembled pages that conform to the standards and specifications established by the Agency.
2. **Delivery of Assembled Pages.** The Contractor shall deliver 12 sets of the assembled pages to the Agency. The Contractor shall make the delivery within 10 calendar days after the Agency delivers its final approval of the blue line pages to the Contractor as provided in Paragraph "A" of this part. The Agency reserves the right to reject assembled pages that do not meet Agency requirements, and may keep, discard, or return the assembled pages to the Contractor.

IX. PACKAGING AND DELIVERY OF BOOKS

- A. **Packaging Requirements.** The Contractor must provide for the safe packaging of the books in cartons that meet all construction requirements of the applicable freight classifications. The weight of each bulk-packaged carton shall not exceed 35 pounds. The books must be packaged in bulk. However, at least five percent of the total quantity ordered, excluding overruns, must be placed in individual cartons. One side of each carton must be printed to indicate its contents and the quantity of books contained in the carton.
- B. **F.O.B.** The Contractor shall deliver the books F.O.B. Destination, Door, Freight Prepaid and Allowed.
- C. **Damaged Books.** A book which is damaged prior to acceptance of delivery by the Agency shall be deemed undelivered.
- D. **Deadlines.** The Contractor shall complete delivery of the books to the Agency as follows:
 1. **Normal Delivery.** For the normal delivery, the Contractor shall deliver the books within 30 calendar days after the Agency delivers its final approval of the blue line pages for the books to the Contractor as provided in Part VIII, Paragraph "A".
 2. **Special Delivery Requirements.** For the special delivery, the Contractor shall deliver at least 980 books to Iowa's eight judicial districts within 30



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

calendar days after the Agency delivers its final approval of the blue line pages to the Contractor as provided in Part VIII, Paragraph "A".

E. Shipping. The Contractor shall provide for the shipment of books, including by providing their loading, transportation, and unloading as follows:

- 1. Specifications.** The Contractor shall make shipments in a manner that meets all requirements for the applicable freight classifications. Shipments of less than 800 pounds shall be made by a courier as approved by the Agency. The FedEx Corporation or United Parcel Services (UPS) is an approved courier. Shipments of 800 or more pounds shall be shipped by a freight company as approved by the Agency. A carton that is packed and delivered on skids shall be strapped to skids by polyethylene wrap. Each package must fit on a 3'4" x 5' pallet without overhang. A pallet shall not be double stacked.
- 2. Segregation of Books for State Capitol Complex Distribution.** The Contractor shall segregate 1,350 books for shipment to the Agency. The Contractor shall ship these books as part of normal delivery as provided under Paragraph "D", Subparagraph 1 of this part, but may provide for the earlier shipment of the books which shall be deemed as part of normal delivery. All of the following shall apply:
 - a. Deadline.** The books must be delivered on or before the deadline for normal delivery under Paragraph "D", Subparagraph 1 of this part.
 - b. State Capitol Complex Distribution.** If the segregated books are shipped with other the balance of the other books for the normal delivery, the segregated books shall be set aside from the other books and fit on a pallet as otherwise required under this Paragraph "E" in order to accommodate the special distribution.
- 3. Destination.** The Contractor shall drop ship books to destinations required in this subparagraph. The following requirements shall govern destination requirements for the delivery of the books:
 - a. Delivery Other Than to Judicial Districts.** For normal delivery as provided in Paragraph "D", Subparagraph 1 of this part, Contractor shall deliver the books as follows:

(1) Address. The Contractor shall deliver the books to:

Grimes State Office Building



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

400 E. 14th St.
Des Moines, Iowa 50319

(2) **Dock Instructions.** The Contractor shall ensure that delivery trucks are able to unload books at this dock. The dock is inside the building, and there are no accommodations to unload by forklift. All pallets must be unloaded by the pallet jacks located at the dock. The maximum clearance for the dock is 13'4". If the Contractor makes the delivery to the dock by a truck that exceeds the 13'4" clearance, the books shall be deemed undelivered without notice to the Contractor by the Agency.

b. **Special Judicial District Delivery.** For special judicial district delivery, the Contractor shall deliver the books directly to the eight judicial districts. The Agency shall deliver to the Contractor instructions which shall include the addresses of delivery locations and which shall provide requirements for predelivery notice procedures. The judicial districts are as follows:

District	City	Zip Code
1 st District	Waterloo	50703
2 nd District	Fort Dodge	50501
3 rd District	Sioux City	51101
4 th District	Council Bluffs	51501
5 th District	Des Moines	50309
6 th District	Cedar Rapids	52401
7 th District	Davenport	52801
8 th District	Ottumwa	52501

F. **Determination Period.** The Agency shall have a period to accept or reject delivery of the books. The Agency shall have a determination period to notify the Contractor that 15 percent or more of the books have been rejected. The determination period begins on the final date required for the normal delivery of the books to the Agency as provided in Paragraph "D", Subparagraph 1, or the actual date that those books were delivered, whichever is later. The determination period shall be for 42-calendar-days. However, if the Agency finds that it has cause, it may notify the Contractor within the 42-calendar-day period that it reserves 28 additional calendar days which equals a determination period of 70 calendar days.

X. PAYMENT OBLIGATIONS



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

- A. General.** The Agency is liable to the Contractor as provided in this contract only for amounts paid in consideration under this contract. The Contractor shall provide the Agency with an invoice for payment. Payment shall be based on work performed and accepted, including the production of sample covers, blue line pages, assembled pages, and books which are delivered to and accepted by the Agency.
- B. Payment Schedule.** Upon delivery of an invoice, the Agency shall pay the amount of the contract price to the Contractor upon the end of the determination period as provided in Part IX, Paragraph "F", unless there is an outstanding dispute between the parties. The Agency may pay any amount earlier than required under this contract if the Contractor verifies that all production costs associated with that order have been incurred. The decision of the Agency to pay an amount early shall not be construed as an amendment of this contract and shall not obligate the Agency to pay the Contractor other than as provided in this contract.
- C. Base Amount.** The Agency shall pay the Contractor for the production and delivery of 3,500 books based on the number of signatures for each book. The Agency shall pay a contract price to the Contractor of \$31,566.53 for the production and delivery of 3,500 books assuming that each book has 1,184 pages with 37 signatures each containing 32 pages.
- D. Adjusted Amount.** The base amount provided in Paragraph "C" of this part shall be adjusted based on all of the following:
- 1. Number of Signatures.** The Agency shall pay the Contractor the base amount plus or minus an adjustment to reflect the actual number of additional or fewer signatures in each book. The adjustment shall be calculated as follows:

	Additional Signatures	Fewer Signatures
Each form of:		
32-page signature:	\$443.85	\$-443.85
16-page signature:	\$221.93	\$-221.93
8-page signature:	\$110.96	\$-110.96

- 2. Overrun.** The Agency shall pay the Contractor \$722 for each additional 100 books of an overrun which are produced and delivered to the Agency. However, the Agency is not required to pay for more than 175 additional books (5 percent of the total number of books required to be produced and delivered under Paragraph "C" of this part).



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

- 3. Prices for Incidental Work.** The Agency shall pay the Contractor for incidental copy preparation and rework as required by the Agency. The prices charged by the Contractor for such work shall not exceed those customarily charged by the Contractor to its customers for similar work. The Contractor shall provide the Agency with proof of customary charges. The Contractor shall not charge more than the following:

Correcting Electronic Files:	\$50.00 per hour
Making Minor Copy Corrections:	\$25.00 per hour
Providing Associated Replating:	\$1.00 per page

The Contractor shall not charge the Agency for the first \$300 for incidental copy preparation and rework as required by the Agency.

XI. COMMUNICATION

- A. Agency Contact Persons.** All communications regarding this contract to the Agency must be addressed to one or both of the Agency's contact persons who shall be Ms. Leslie Hickey or in the alternative Ms. Joanne Page:

Ms. Leslie Hickey
Iowa Code Editor
Legislative Services Agency
Address: Ola Babcock Miller Building
Des Moines, Iowa 50319
Telephone: (515) 281-8871
Fax: (515) 281-4424
E-mail: leslie.hickey@legis.state.ia.us

Ms. Joanne Page
Deputy Code Editor
Legislative Services Agency
Address: Ola Babcock Miller Building
Des Moines, Iowa 50319
Telephone: (515) 242-6464
Fax: (515) 281-4424
E-mail: joanne.page@legis.state.ia.us

Ms. Hickey or Ms. Page may designate alternate persons to communicate regarding any issue which arises under this contract.

- B. Contractor Contact Persons and Responses.** All communications to the Contractor regarding the production of the books shall be made to the Contractor's primary contact person, Ms. Nancy Roth or the alternative contact person, Ms. Jackie Wrolstad.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

- 1. Contact Information.** The contact information for Ms. Roth and Ms. Wrolstad is as follows:

Ms. Nancy Roth
Manufacturing Client Services
West, a Thomson business
Address: 610 Opperman Drive
Eagan, MN 55123
Telephone: (651) 687-6964
E-mail: nancy.roth@thomson.com
Pager: (612) 622-1775

Ms. Jackie Wrolstad
Manufacturing Client Services
West, a Thomson business
Address: 610 Opperman Drive
Eagan, MN 55123
Telephone: (651) 848-3623
E-mail: jackie.wrolstad@thomson.com
Pager: (612) 606-9420

- 2. Availability.** Either Ms. Roth or Ms. Wrolstad shall be available during all days in which the books are being produced and which shall at least include all business days until the Agency accepts all books required to be produced and delivered under this contract.
- 3. Message and Response.** If Ms. Hickey or Ms. Page, or a designee, delivers a message to the Contractor's primary contact person regarding the production or delivery of materials as specified in this contract, one of the contact persons shall respond to Ms. Hickey, Ms. Page, or their designee, as is provided in this subparagraph. If the primary contact person is not available, Ms. Hickey or Ms. Page or a designee shall deliver the message to the Contractor's secondary contact person. Ms. Hickey or Ms. Page shall record messages via the contact person's pager specified in Subparagraph 1 of this Paragraph B. Ms. Hickey or Ms. Page may also confirm the delivery of the message by sending an electronic message to the contact persons' e-mail addresses as specified in Subparagraph 1 of this Paragraph B. One of the Contractor's contact persons shall respond to Ms. Hickey, Ms. Page, or the designee, as soon as possible but no later than as follows:
- a. Blue Line Pages.** If Ms. Hickey or Ms. Page delivers a message regarding the production or delivery of blue line pages, the contact person shall respond no later than four hours after Ms. Hickey or Ms. Page delivers the message. If, however, the four hour period will expire after 4:30 p.m. of the business day on which the message is delivered, the Contractor shall respond no later than by 8:30 a.m. on the next business day.
 - b. Not Blue Line Pages.** If Ms. Hickey or Ms. Page delivers a message, other than a message regarding the production or delivery of blue line pages, the contact person shall respond no later than by noon on the next business day.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

Nothing in this Subparagraph 3 requires the Contractor to provide an immediate answer or deliver materials to the Agency in response to the communication. The Agency reserves the right to assess liquidated damages against the Contractor for a breach of this Subparagraph 3, pursuant to Part XII, Paragraph "I".

XII. COMPLIANCE, TERMINATION, AND REMEDIES

- A. General.** Remedies available as provided in this contract are in addition to every other remedy available at law or in equity.
- B. Indemnification.** Except as provided in this contract, the Contractor shall jointly and severally indemnify and hold the Agency, the Iowa General Assembly, and the State of Iowa harmless from and against all liability, loss, damage, or expense, including reasonable attorney fees, by reason of a breach of contract by the Contractor.
- E. Performance Bond.** The Contractor shall post a performance bond with the Agency in the amount of \$23,674.89 (75 percent of the of the base amount as provided in Part X, Paragraph "C" without adjustment as otherwise provided in Part X, Paragraph "D"). A certified check, cashier's check, or money order may be provided in lieu of a bond, and must be kept on file with the Agency. The Agency may retain the performance bond until the end of the determination period as provided in Part IX, Paragraph "F", unless there is a dispute between the parties. In that case, the Agency may retain the performance bond until the dispute has been resolved.
- D. Justifiable Termination.** Any of the following shall be just cause for terminating this contract, without breach of contract:
- 1. Insufficient Moneys.** If moneys necessary to satisfy the contract price are at any time not forthcoming or insufficient through the failure of the State of Iowa to make sufficient moneys available as a result of legally binding action, then the Agency may terminate this contract by giving not less than 20 calendar days written notice to the Contractor documenting the lack of funding. Upon termination, the Agency agrees to pay all costs incurred by the Contractor up and until the date of termination. If moneys necessary to satisfy the contract price become available within 40 calendar days subsequent to the termination under this contract, the Agency agrees to re-execute a contract with the Contractor under the same provisions of this contract and any amendments as agreed to by the Agency and the Contractor.



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

2. Force Majeure. If the performance of any provision of this contract is prevented by an act of God, such as civil tumult, war, epidemic, interruption of transportation or communication, or any other cause beyond the control of a party, as determined by the Agency, that party is relieved of the performance of that provision of this contract. However, if the Contractor is prevented from performance, the Contractor shall provide the Agency with written notice within 10 calendar days specifying the delayed event, the cause of the delay, its possible duration, the Contractor's efforts to remedy the situation, and the expected effect of the delay upon the schedule contained in this contract. It shall be the Contractor's responsibility to show that the cause of the delay was beyond the Contractor's control and that the Contractor was not reasonably able to anticipate the event in order to avoid the delay.

E. Nonjustifiable Termination. Either party may terminate this contract if the other party breaches this contract by failing to substantially comply with a provision of this contract. The party terminating this contract shall deliver written notice to the other party at least 20 calendar days following the breach. The written notice shall document the breach of contract. If the Contractor breaches this contract by failing to satisfy such provision, the Contractor shall forfeit the performance bond and the Agency may withhold all or a portion of unexpended moneys of the contract price, retaining such moneys as liquidated damages. The Agency may also continue this contract, and retain such moneys as liquidated damages. The Agency shall deliver notice to the Contractor in writing of its decision to retain an amount of liquidated damages not later than 20 calendar days following the breach of contract.

F. Unilateral Termination. The Agency may unilaterally terminate this contract for a breach of contract as provided in this Paragraph "F". The Agency shall notify the Contractor of the unilateral termination, including documenting the breach of contract which warrants the unilateral termination. The notice shall suspend any obligation by the Agency to carry out the provisions of this contract. The Contractor shall forfeit the performance bond; the Agency may withhold all or a portion of unexpended moneys of the contract price, retaining such moneys as liquidated damages; and the Agency shall be entitled to \$23,674.89 (75 percent of the of the base amount as provided in Part X, Paragraph "C" without adjustment as otherwise provided in Part X, Paragraph "D"). in additional liquidated damages, based on potential lost sales to the Agency, damage to the Agency's reputation, and delays caused by selecting another vendor to complete the production and delivery of the books. The Agency may unilaterally terminate this contract based on any of the following breaches of contract:

1. Unauthorized Copyright. The Contractor obtains or attempts to obtain a copyright in text or data produced in a book or originating from electronic media



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

transferred or delivered to the Contractor by the Agency as provided in this contract.

2. **Unauthorized Release.** The Contractor releases text or data delivered to the Contractor by the Agency under this contract to any person including but not limited to a related entity of the Contractor, the text or data is produced in a book or originates from electronic media transferred or delivered to the Contractor by the Agency, and the release is not expressly approved in writing by the Agency.
 3. **Unauthorized Publishing.** The Contractor uses text or data delivered to the Contractor by the Agency under this contract for purposes of publishing, without the express written approval of the Agency.
 4. **Corruption of Text.** The Contractor delivers a blue line page that includes text that is corrupted or does not otherwise match the text delivered by the Agency to the Contractor for production of the blue line pages. This Subparagraph 4 does not apply to sample blue line pages as provided in Part VII, Paragraph "B", or if the corruption of the text is due to the Agency's use of technology or procedures to produce or transmit information to the Contractor for the production of the blue line pages.
 5. **Unwarranted Delay.** The Contractor fails to deliver blue line pages, assembled pages, or books more than 20 calendar days after a date required in this contract.
 6. **Unsatisfactory Sample Blue Line Pages.** The Agency rejects all or a majority of sample blue line pages as required to be accepted by the Agency within the trial production period as provided in Part VII, Paragraph "B".
 7. **Unsatisfactory Books.** The Agency rejects books delivered to the Agency according to the following:
 - a. **Rejection Rate.** The Agency determines that 15 percent or more of the total number of books are unsatisfactory.
 - b. **Rejection Procedure.** The Agency shall notify the Contractor of the rejection as soon as practicable. However, the Agency shall have the determination period as provided in Part IX, Paragraph "F", to notify the Contractor that the Contractor has exceeded the rejection rate.
- G. Specific Performance.** The Agency may demand specific performance for a breach of contract as provided in this Paragraph "G". The Agency shall notify the



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

Contractor in writing of the breach of contract that warrants the specific performance within the determination period provided in Part IX, Paragraph "F". The notice shall document the breach of contract and detail the specific performance demanded. The notice shall suspend any obligation by the Agency to carry out the provisions of this contract until specific performance is completed. The Contractor shall be subject to any applicable liquidated damages for a delay in delivery as provided in this contract. The Agency may demand specific performance as follows:

1. **Rejected Book.** The Agency may reject a book which does not meet the requirements of this contract. The Agency may demand an exchange for a new book at the expense of the Contractor.
 2. **Underrun.** If the Contractor produces an under-run, the Agency may require the Contractor to deliver the number of books required by this contract to the Agency.
 3. **Unauthorized Copyright.** If the Contractor obtains or attempts to obtain a copyright in text or data, the Contractor shall immediately withdraw any application for the copyright and renounce any such copyright that the Contractor has obtained.
 4. **Unauthorized Release.** If the Contractor releases text or data to an unauthorized person, the Contractor shall take all actions necessary to recover the text or data from that person. The Contractor shall return the text or data to the Agency or destroy the text or data in a manner specified by the Agency.
 5. **Unauthorized Publishing.** If the Contractor uses text or data for purposes of unauthorized publishing, the Contractor shall destroy any publication which uses such text or data upon demand by the Agency.
- H. **Liquidated Damages -- Delay in Delivery.** The Agency may demand liquidated damages for a delay in delivery of blue line pages, assembled pages, or books as required in this contract. The Agency shall notify the Contractor in writing of the breach of contract that warrants the assessment of liquidated damages within the determination period provided in Part IX, Paragraph "F". The notice shall document the breach of contract and state the amount of the liquidated damages assessed against the Contractor. The Agency shall have the right to subtract that amount from the contract price for a delay in the delivery of blue line pages, assembled pages, or books as required in this contract. The following shall apply:
1. **Blue Line Pages.** For a delay in the delivery of blue line pages, including sample blue line pages as provided in Part VII, Paragraph "B", or blue line pages



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

used to produce books as provided in Part VIII, Paragraph "A", the amount of liquidated damages shall be based on the assumption that there will be an accompanying one-business-day delay in the delivery of the books to the Agency's customers and for each business day of such delay, the Agency will incur a loss in sales plus an accompanying loss of goodwill. The amount of liquidated damages shall be \$100 for each business day of delay.

2. **Assembled Pages.** For a delay of the delivery of assembled pages, as provided in Part VIII, Paragraph "B", the amount of liquidated damages shall be based on the assumption that each calendar day of such delay will cause harm to the legislative process due to the lack of assembled pages for use by the staff of the Agency and will cause irreparable damage to the reputation of the Agency. The amount of liquidated damages shall be \$25 for each calendar day of delay.
 3. **Books.** For a delay in the normal delivery of books as provided in Part IX, Paragraph "D", Subparagraph 1 or special delivery as provided in Part IX, Paragraph "D", Subparagraph 2, the amount of liquidated damages shall be based on the assumption that there will be an accompanying one-business-day delay in the delivery of the books to the Agency's customers and that for each business day of such delay, the Agency will incur a loss in sales plus an accompanying loss of goodwill. The amount of liquidated damages shall equal \$100 for each business day of delay. However, the Contractor shall not be subject to liquidated damages for a delay in the delivery of two percent (2%) or less of all books subject to normal delivery.
- I. **Liquidated Damages -- Delay in Response.** The Agency may demand liquidated damages for the Contractor's delay in responding to a message by the Agency during production as provided in Part XI, Paragraph "B", Subparagraph 2. The Agency shall notify the Contractor in writing of the breach of contract that warrants the assessment of liquidated damages within the determination period provided in Part IX, Paragraph "F". The notice shall document the breach of contract and state the amount of the liquidated damages assessed against the Contractor. The Agency shall have the right to subtract that amount from the contract price for a delay in the delivery of blue line pages, assembled pages, or books as required in this contract. The following shall apply:
1. **Responses Regarding Blue Line Pages.** For a delay in responding to a message regarding the production or delivery of blue line pages, the amount of liquidated damages shall be based on the assumption there will be an accompanying one-business-day delay in the delivery of the books to the Agency's customers and that for each business day of such delay, the Agency



2004 CONTRACT

PRINTING AND BINDING THE 2004 IOWA ACTS

will incur a loss in sales plus an accompanying loss of goodwill. The amount of liquidated damages shall be \$100 for each business day of delay.

2. **Responses Regarding Messages Not Regarding Blue Line Pages.** For a delay in responding to a message not regarding the production or delivery of blue line pages, the amount of liquidated damages shall be based on the assumption there will be an accompanying one-half-business-day delay in the delivery of the books to the Agency's customers and that for each one-half business day of such delay, the Agency will incur a loss in sales plus an accompanying loss of goodwill. The amount of liquidated damages shall be \$50 for each business day of delay.

XIII. WAIVERS AND AMENDMENTS

- A. **Writing Requirement.** A waiver or amendment of a provision of this contract shall not be valid unless in writing.
- B. **Waiver Restriction.** No person representing the Agency may waive a requirement or amend this contract, except Mr. Dennis Prouty, Director; Mr. Richard Johnson, Legal Services Division Director; or Ms. Leslie Hickey, Iowa Code Editor.
- C. **Failure to Act Is Not a Waiver.** The failure of a party at any time to enforce a provision of this contract is not a waiver of the provision, and does not affect the validity of any provision of this contract or the right of either party to subsequently enforce a provision of this contract. A decision by the Agency to ignore a breach of this contract is not a waiver of a subsequent breach of this contract.

XIV. EXECUTION AND EFFECT OF EXECUTION


- A. **Integration.** This contract contains the entire agreement between the Agency and the Contractor, and representations made before the signing of this contract shall not be binding, and neither party shall rely upon conflicting prior representations in entering into this contract. This contract supersedes the provisions of any Request for Proposals or agreements made prior to the execution of this contract.
- B. **Effective and Termination Dates.** This contract takes effect upon being signed by authorized representatives of the Agency and the Contractor and continues until the provisions of this contract are satisfactorily performed, or until this contract is otherwise terminated under its provisions.
- C. **Signatures.** The duly recognized representatives of the Agency and the Contractor have on the date noted signed their names to and executed this contract:



2004 CONTRACT PRINTING AND BINDING THE 2004 IOWA ACTS


Dennis Prouty, Director
Legislative Services Agency

8/5/04
Date


Malcolm D. Conner, Vice-President,
Government Segment
West Publishing Corporation
(West, a Thompson business)

8/4/04
Date

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